

EXHIBIT A

PART 6

1 to have inadvertently activated the foot pedal
2 as your opinion assumes if her foot was
3 12 inches away from the foot control at resting
4 position, all the way down to 1 inch away from
5 the foot control, is there any difference?

6 A. It has no -- that actually has no
7 meaning. The -- it has to do with, you
8 know, when she leans forward, you know, the --
9 is she able to reach the press and, you know, if
10 she is in a home base where she could have
11 reached the pedal comfortably to begin with,
12 that's all that counts. I don't care whether it
13 is comfortable, you are 2 inches away or
14 12 inches away, as long as you have -- you are
15 in a position where you can activate the unit
16 and still put your hands into the press.
17 Whatever is done advertently can be done
18 inadvertently.

19 Q. Let's assume that she was in the
20 sitting position before this incident occurred,
21 how far would she have to lean her torso forward
22 for her foot to begin moving in this
23 involuntary --

24 A. The instant you start to move forward

1 your foot could move. The instant you go from a
2 relaxed position and I am going to reach
3 forward, one of the natural things you do when
4 you reach forward is step forward to be prepared
5 to stabilize yourself so you don't fall on your
6 face.

7 Q. From the seating -- seating position?

8 A. Right, I mean that's one of the things
9 that you do.

10 Q. What are you relying upon in forming
11 that opinion, that your foot --

12 A. It is the definition of ambulation.

13 Q. Here I am moving my forward torso, my
14 foot is not moving, and I am moving it the
15 entire way --

16 A. Every time you move forward you just
17 put pressure on your foot.

18 Q. Right.

19 A. And if you are worried that you are
20 going to move so far forward that you have to
21 stabilize yourself. Let's say you back your
22 feet up and you have it resting on the chair and
23 you move forward like that, I assure you your
24 foot will come forward to make sure that you are

1 stable.

2 Q. Do you have any evidence that her foot
3 was back behind on the chair?

4 A. I have no evidence of any of this.

5 Q. Okay, well, here I am --

6 A. Yes.

7 Q. -- correct me if I am wrong, I am
8 seated in my chair, my feet are flat; are they
9 not?

10 A. Yes.

11 Q. And I am leaning all the way down to
12 my -- such that my chest hits my knees --

13 A. Right.

14 Q. -- and my foot hasn't moved; right?

15 A. Your foot hasn't moved and you put
16 pressure on your feet when you have done that.

17 Q. Okay. So what is it about her
18 situation that caused her -- and if I lean
19 forward as far as I can, my foot hasn't moved;
20 is that right?

21 A. That's right, and you put more pressure
22 on your foot.

23 Q. Okay. So what is it about her
24 situation that leads you to conclude that her

1 foot is actually moved the distance whatever it
2 is away from the foot --

3 A. That her foot is not in a stable
4 position in front of her like yours are, they
5 are back.

6 Q. Okay, this is what I wanted to hear.
7 So you are -- are you saying that it was
8 dangling?

9 A. Not necessarily dangling. Her foot
10 could be moved back in a position where you
11 can't stabilize yourself if you move forward.
12 You have pulled it out of the unit, and you are
13 now less stable in the moving forward position
14 because you are out of the unit, and now when
15 you lean forward, it is necessary to step
16 forward to stabilize yourself.

17 Q. Has she ever indicated that she was
18 unstable?

19 A. I never -- remember once again I didn't
20 interview her.

21 Q. Isn't that significant?

22 A. What's significant?

23 Q. Whether or not she was unstable when
24 she leaned her torso forward if she was in a

1 seating position because as we have just shown,
2 I'm -- my feet are stable, my foot is not
3 moving. Are you saying if her foot was behind
4 her, you are saying it would move forward. Now,
5 I can tell you I am doing the same thing with my
6 foot behind me like you are saying and my foot
7 is still not moving.

8 A. Oh, no, no, no, no, you are not putting
9 your foot behind you or you would be on your
10 face.

11 Q. Where -- how far behind you is your
12 foot --

13 A. Put --

14 Q. -- needing to be?

15 A. -- your feet back, way back.

16 Q. Here it is, all the way back.

17 A. Right, take your other foot and put it
18 back.

19 Q. Both of them?

20 A. Right.

21 Q. Okay, okay --

22 A. Now try to lean forward.

23 Q. Okay. So you need to have both feet
24 back before this scenario occurs?

1 A. Right.

2 Q. Okay, I want to make sure I understand
3 what your scenario is assuming.

4 A. Now, all I am --

5 MR. HARTMAN: I am going to object to the
6 form of the question because the scenario is
7 assuming based on your sitting there digging
8 your toes into the floor as you are doing this.

9 There is no indication that he has
10 indicated that he is assuming these for the
11 scenario except for the basic principle of
12 ambulation is applied to any situation.

13 MR. ROBINSON: I don't understand it but
14 okay.

15 MR. HARTMAN: Well --

16 THE WITNESS: Well, if you are standing
17 straight up, you cannot move unless you lean
18 forward and start to fall, and then you need a
19 foot to catch you when you fall. That's what
20 ambulation is.

21 BY MR. ROBINSON:

22 Q. I am referring to a seating position
23 right now. I am only referring to a seating
24 position.

1 A. Well, I understand. And I have no
2 evidence that she was seated. I only have
3 evidence that she was either seated or leaning
4 against the seat. That's the only thing I have
5 seen in the file.

6 Q. Okay, let's talk about leaning against
7 the seat. Have you done any type of study to
8 see how far her torso would need to move or
9 where her feet would need to be if she were
10 leaning against the seat?

11 A. No, I haven't.

12 Q. Wouldn't it be important for you to
13 know in coming to this assumption that her foot
14 inadvertently moved whether she was seating --
15 seated, leaning, or standing; wouldn't that be
16 an important determination?

17 A. No, not important to me, it is not
18 important to me. What is important to me is
19 that she is in a position where she is able to
20 activate the press.

21 Q. If your feet are -- if your feet are --
22 I don't want to just use me. If your foot are
23 flat in front of you --

24 A. Yes.

1 Q. -- and you lean forward, do your feet
2 move all the time?

3 A. No.

4 Q. Do they move ever?

5 A. Sometimes.

6 Q. Would you -- can you show me.

7 A. I don't understand.

8 Q. I want to know what you are describing.
9 Put your feet flat on the floor --

10 A. Yes.

11 Q. -- and then lean forward.

12 A. If I lean forward enough, I am going to
13 have to move my feet forward.

14 Q. Your foot hasn't moved --

15 A. Well, let me start further back --

16 THE COURT REPORTER: Pardon me, pardon me, I
17 can't, I can't.

18 MR. ROBINSON: Okay.

19 MR. HARTMAN: Okay.

20 MR. ROBINSON: Hold on.

21 THE COURT REPORTER: I need to rest a
22 minute. I really do.

23 MR. ROBINSON: Hold on. I understand. Go
24 ahead.

1 THE COURT REPORTER: I just -- I can't get
2 both of you. I am trying to get every single
3 word --

4 MR. ROBINSON: I understand.

5 THE COURT REPORTER: -- and I can't get
6 every word.

7 MR. HARTMAN: Okay, I understand.

8 THE WITNESS: We will slow down.

9 MR. HARTMAN: Okay, I want to interject
10 something, Mr. Robinson is being extremely
11 argumentative with this witness. I have let it
12 go on for way too long. There is a basic
13 principle that's been applied to the situation.

14 MR. ROBINSON: I object to your speaking
15 comments again, Mr. Hartman.

16 MR. HARTMAN: Okay, you are entitled to it.
17 At some point in time this has to end. He
18 cannot become argumentative with the witness.
19 He cannot give a -- sit there and use his body
20 ambulations and configurations to try and
21 distort a well known fact by anyone who knows
22 anything about the subject matter about the
23 theory of ambulation.

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1 BY MR. ROBINSON:

2 Q. Sir, back to what we are talking about,
3 I am talking -- I know you said if you put your
4 feet behind you. I am talking about if you put
5 your feet flat on the ground, are your feet
6 moving when you lean your torso toward?

7 A. If I already have my feet in a stable
8 position that would allow me to reach forward --

9 Q. Yes.

10 A. -- with my feet in that position --

11 Q. Yes.

12 A. -- then I don't have to move them
13 forward anymore.

14 Q. So how far back do your feet need to be
15 before they begin to move with the forward
16 movement of the torso in a seated position?

17 A. You can't -- there is no way to answer
18 the question. There is no way to answer that
19 question.

20 Q. Aren't those significant --

21 A. You haven't given me the parameters to
22 answer.

23 Q. Aren't those significant questions to
24 know answers to when formulating an opinion as

1 to what Tina Lindquist did?

2 A. Absolutely not. I am not going to
3 speculate on what she did. She is going to be a
4 human being that you can ask all the questions
5 you want.

6 The fact that you are not skillful
7 enough to get the information when you took her
8 deposition doesn't mean you are going to get it
9 from me on the basis of speculation. I am not
10 going to do that.

11 I will give you principles, but I am
12 not going to speculate what she was doing. If I
13 ask her the questions, then I would take
14 responsibility for all these -- all the
15 questions you are asking, but I haven't
16 interviewed her.

17 Q. Aren't you speculating that her foot
18 moved forward?

19 A. She said that she had her foot outside
20 of the unit.

21 Q. I said aren't you speculating that her
22 foot moved forward?

23 A. It is not speculation. That is a
24 scientific fact. If she has her foot outside of

1 the unit and she has made the unit activate to
2 hurt her hands, this is a one-note samba. It is
3 not like there is 11 different things that can
4 happen.

5 She has to step into the switch far
6 enough to push the pedal in, to push the lock
7 plate in, push down on the unit in order to have
8 a stroke that will hurt her so that we know this
9 working backwards.

10 Q. Do you know that OSHA in investigating
11 this accident indicated the foot control was
12 properly guarded?

13 A. I don't know anything of the kind.

14 Q. Did you review the OSHA?

15 A. You are certainly not going to try to
16 impress me with what OSHA knows about foot
17 pedals. I hope you are not going to try --

18 Q. I am --

19 A. -- to do that.

20 Q. -- not sure what you mean by that.

21 What do you mean by that?

22 A. Well, first of all, I have had 19
23 contracts with OSHA where I developed a training
24 program that OSHA uses for their compliance

1 officers in different fields.

2 I am an authority. OSHA is not an
3 authority. They don't do any research at OSHA.
4 All of the work that's done, the research that's
5 done in safety is done in the Department of the
6 Interior by the -- by NIOSH, not by OSHA. They
7 don't do any testing. They copy the standards
8 that Ralph Barnett and people like me make.

9 And since I am the one, for example,
10 that ran the A14 committee, you know, as a
11 technical secretariat on ladders, everything we
12 do on ladders they copy word for word and put
13 into OSHA. They don't do any original work on
14 their own.

15 Q. You don't have much respect for OSHA it
16 sounds like?

17 A. I have no respect for OSHA at all.
18 What they do is they copy. They started in
19 business by copying and plagiarizing every
20 wonderful standard that we have in the
21 United States and copied it down and said this
22 is our regulation. They didn't do a scintilla
23 of work of their own.

24 Now, that doesn't mean the work that

1 they get -- they get in this way is bad. They
2 copied from the best. Just like the student in
3 school that wants to sit in back of the best
4 student, if he copies over his shoulder, he is
5 liable to get an A in the class.

6 Q. Did they copy from you, is that what
7 you are saying?

8 A. Of course they copied from me. That
9 was their job.

10 MR. ROBINSON: Why don't we take a little
11 break and we will look at the file of materials
12 that have been brought.

13 THE VIDEOGRAPHER: Off the record at 4:37 p.m.

14 (Recess taken.)

15 THE VIDEOGRAPHER: Back on the record at
16 4:45 p.m.

17 BY MR. ROBINSON:

18 Q. Was this Heim press brake intended to
19 be used with the point of operations safety
20 device, sir?

21 A. I think so.

22 Q. With regard to the gate, when did the
23 gate come out?

24 A. The gate that I am talking about was I

1 think first introduced in '76 and then put into
2 the catalogues in '77.

3 Q. Do you know if Heim ever received the
4 catalogue before the sale of this particular
5 press brake?

6 A. I don't know specifically what they
7 received, but, you know, Linemaster had a
8 campaign to send this notification about this
9 switch to everybody. And Heim would have -- the
10 best I could tell you Heim would have been a
11 really good customer of Linemaster.

12 Q. And --

13 A. And that I know from my own. That's
14 not speculation on my part. I know this.

15 Q. No, my question is simply do you have
16 any information that Heim was aware of the
17 existence of a gated foot control at the time it
18 sold this one, this press brake in 1978?

19 A. I think they should have been because I
20 am sure that they received the notice from
21 Linemaster.

22 Q. Should have been is something we will
23 get into it. Do you have any evidence that they
24 actually knew?

1 A. I have no evidence.

2 Q. And when you say that they should have
3 been, you are saying that because of the
4 publication by Linemaster that Linemaster would
5 have given that to Heim?

6 A. Right, and they also at the shows, you
7 know, the -- if Heim went to any of the shows
8 they would have seen it because they were
9 displaying -- they were displaying this new
10 device at their shows.

11 Q. Do you have any evidence that Heim was
12 at a show where it has been displayed?

13 A. No, I don't.

14 Q. Have you ever talked with anyone from
15 Linemaster to see if they provided Heim with
16 notice of a gate --

17 A. No.

18 Q. -- a gated foot control?

19 A. I have not.

20 Q. Your entire file I believe has been
21 brought down here. It is getting late in the
22 day, ten to 5:00. I'd like an opportunity to
23 view that file. I had suggested that it be left
24 here for the evening since we are coming back

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1 tomorrow. Do you have any issue with leaving it
2 here, sir?

3 A. I have -- the only issue I have is its
4 security. If you represent to me that nothing
5 is going to happen to it, you know, the -- there
6 is certainly nothing in there that I don't want
7 you to see.

8 Q. Okay. Well, Mr. Hartman, you had heard
9 him say that he wasn't going to leave it here --

10 A. He is not as trusting as I am. That's
11 not his business to be trusting. Mine is.

12 Q. Well, I would appreciate that because I
13 don't really have the opportunity right now
14 to -- as you know we are going to ask
15 Mr. Ulmenstein a few questions about some of the
16 new materials you had produced and new
17 notations. And I just don't want to have to
18 take -- I was asked if I reviewed it. How large
19 is the file? It is three Bankers Boxes; right?

20 A. Exactly.

21 Q. Right, so --

22 MR. HARTMAN: If he doesn't have an
23 objection and you guarantee the security of it,
24 I don't have an objection either.

1 MR. ROBINSON: Yeah, I'm not sure what that
2 means. I am going to guarantee the security? I
3 am not going to guarantee, guarantee from a fire
4 loss or a tornado, I can't guarantee that.

5 THE WITNESS: No, I don't mean that. I mean
6 I have had files where they picked up the file
7 from the file room and filed it in the wrong
8 place and every report disappeared, never to be
9 found again, you know, \$35,000 for a report
10 which we could never find again and could never
11 get back into the plant to redo it. I mean
12 that's the kind of stuff that worries me.

13 MR. HARTMAN: Okay.

14 MR. ROBINSON: And my plan would most likely
15 be to come here very early tomorrow morning.

16 THE WITNESS: If the room is dedicated to
17 your efforts, then that's probably going to be
18 fine.

19 MR. HARTMAN: I have no objection.

20 MR. ROBINSON: Okay, great.

21 That's all the questions I have, sir.
22 Thank you very much.

23 THE WITNESS: Thank you.

24

1 EXAMINATION

2 BY MR. HARTMAN:

3 Q. I am sorry, I just have a couple. I
4 normally wouldn't ask questions, but at one time
5 and I think it is a mistake, but just clarify it
6 for me, you indicated that the Heim machine was
7 a 35 stroke per minute machine?

8 A. Yes.

9 Q. And then another time you indicated
10 that it was a 35 stroke per second machine. I
11 think it is a 35 stroke per minute?

12 A. It is per minute.

13 Q. Okay.

14 A. If it was per second, let me tell you
15 something, it is -- they have a name for it. It
16 is called a hummingbird.

17 Q. I just -- I just don't want it to come
18 back that you --

19 A. Right.

20 Q. -- stated on the record --

21 A. Thank you.

22 Q. The other issue I have is with regard
23 to -- I will grab my note, give me a second, I
24 had it, you indicated that the -- is it ever

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1 safe to have an unguarded foot pedal associated
2 with the press brake?

3 MR. ROBINSON: Object to the form of the
4 question.

5 THE WITNESS: On a general purpose machine
6 it is never safe because the number of scenarios
7 that you have when you have a tethered
8 footswitch that could find itself anyplace on
9 the floor, it means that the folks delivering
10 the new parts to the machine to be processed,
11 the folks that are picking up the finished
12 parts, the people who are doing adjustments and
13 lubrication of the machine, there is an army of
14 people who walk in the area where the footswitch
15 is located, any of these people can step
16 inadvertently into this machine and produce a
17 stroke and so, you know, the rule is to minimize
18 the probability of accidental activation for the
19 environment that the -- that these switches find
20 themselves.

21 And the -- there is no such thing when
22 you have a switch that is meant to be activated
23 by a human being as making it so that you could
24 never activate it because then you could never

1 run the machine.

2 So what we are trying to do is get
3 controls such that they are sensitive to when we
4 want them to work, they work. When we don't
5 want them to activate, they don't.

6 And that is a real challenge for the
7 technical community and, you know -- you know, I
8 am very proud of the fact that some of the
9 people who make footswitches have been improving
10 their menu of potential devices so that
11 machinery manufacturers can pick ones that come
12 closer to this goal of minimizing accidental
13 activation.

14 MR. HARTMAN: No further questions.

15 THE WITNESS: I do -- I think I have to add
16 something to the thing. Remember I told you
17 that I also have made a mistake in the report
18 and you didn't ask me what that was. But if we
19 would -- if you could give me the Triodyne
20 report, it is one word.

21 MR. ROBINSON: The illustrated?

22 THE WITNESS: Yes. Did you see that in
23 there?

24 MR. ROBINSON: I did. And that's why I

1 didn't ask about it, but I did see it. That's
2 the actual original report, and I appreciate
3 that, sir.

4 THE WITNESS: I just wanted to make sure you
5 did see it.

6 MR. HARTMAN: Okay, we want to read. We are
7 not waiving. Thank you.

8 THE WITNESS: Thank you.

9 THE VIDEOGRAPHER: Off the record at 4:52 p.m.

10 (Whereupon, Barnett Deposition
11 Exhibit G and H were marked for
12 identification.)

13 (FURTHER DEPONENT SAITH NAUGHT.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DuPAGE)

4 I, Patricia L. Wangler, a notary public
5 within and for the County of DuPage and State of
6 Illinois, do hereby certify that heretofore,
7 to-wit, on the 6th day of April, 2006,
8 personally appeared before me, at
9 33 North LaSalle Street, Illinois, RALPH L.
10 BARNETT, in a cause now pending and undetermined
11 in the United States District Court, wherein
12 TINA LINDQUIST is the Plaintiff, and HEIM, L.P.,
13 is the Defendant.

14 I further certify that the said witness
15 was first duly sworn to testify the truth, the
16 whole truth and nothing but the truth in the
17 cause aforesaid; that the testimony then given
18 by said witness was reported stenographically by
19 me in the presence of the said witness, and
20 afterwards reduced to typewriting by
21 Computer-Aided Transcription, and the foregoing
22 is a true and correct transcript of the
23 testimony so given by said witness as aforesaid.

24 I further certify that the signature to

1 the foregoing deposition was not waived by
2 counsel for the respective parties.

3 I further certify that the taking of this
4 deposition was pursuant to Notice, and that
5 there were present at the deposition the
6 attorneys hereinbefore mentioned.

7 I further certify that I am not counsel
8 for nor in any way related to the parties to
9 this suit, nor am I in any way interested in the
10 outcome thereof.

11 IN TESTIMONY WHEREOF: I have hereunto
12 set my hand and affixed my notarial seal this
13 10 day of April, 2006.

14

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16

Patricia J. Wampler

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NOTARY PUBLIC, DuPAGE COUNTY, ILLINOIS

19

LIC. NO. 084-002417

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1 STATEMENT OF CHANGE OR CORRECTION

2 Page and Line Number 13, 13 Ulmenstein → Ulmenstine

3 Reason _____

4 Page and Line Number 47, 7 gated → mousetrap5 Reason Trick question6 Page and Line Number 48, 11 gated → mousetrap7 Reason Trick question; mousetrap is the subject8 Page and Line Number 49, 7 gated → mousetrap9 Reason Trick question - discussing Allen Bradley 20510 Page and Line Number 50, 3 startled → startle

11 Reason _____

12 Page and Line Number 96, 20 out with → with out13 Reason What I'm talking about!14 Page and Line Number 136, 12 gate → mousetrap15 Reason Properly characterizes my publications.16 Page and Line Number 150, 18 Yes → No17 Reason See p 159, 1718 Page and Line Number 165, 22 pinking → picks19 Reason Misspoke20 Page and Line Number 181, 3 Insert "not" between21 ~~Reason~~ That's and much.22 Page and Line Number 213, 13 & 15 plate → gate23 Reason Plate cannot rest on foot

24

Ralph L. Barnett 5/3/06

McCORKLE COURT REPORTERS, INC.
CHICAGO, ILLINOIS (312) 263-0052

APR-24-2006 02:42PM FROM-

T-727 P.002/004 F-035

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

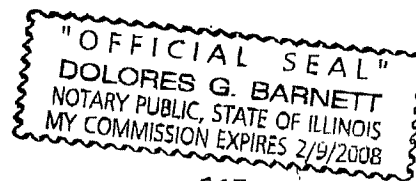
4 TINA LINDQUIST,)
5 Plaintiff,)
6 vs.) No. 04-249E
7 HEIM, L.P.,)
8 Defendants.)

9 This is to certify that I have read the
10 transcript of my deposition taken in the
11 above-entitled cause by Patricia L. Wangler,
12 Certified Shorthand Reporter, on the 6th day of
13 April 2006, and that the foregoing transcript
14 accurately states the questions asked and the
15 answers given by me as they now appear.

RALPH L. BARNETT

18 SUBSCRIBED AND SWORN TO
19 Before me this 4 day
20 of May 2 2005

21 [Signature]
22 Notary Public



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